APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED AUGUST 31, 2000

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 99-35031

D.C. No. CV-98-5268-FDB

MISSOURI ON THE MAINLAND INC.,
a Washington nonprofit corporation,

Plaintiff-Appellant,

v.

JOHN DALTON, Secretary of the Navy; UNITED STATES DEPARTMENT OF THE NAVY, Inspector General; GENERAL SERVICES ADMINISTRATION, Chief Administrator; COMPTROLLER GENERAL, General Accounting Office,

Defendants-Appellees.

MEMORANDUM[1]

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Argued and Submitted August 10, 2000
Seattle, Washington

---

1. This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Appendix A

Before: B. FLETCHER, TASHIMA, Circuit Judges, and DUPLANTIER, District Judge[2]

The critical issue before us is whether Missouri on the Mainland has standing to challenge the Secretary of the Navy's decision under 10 U.S.C. § 7306 (1994) to donate the former USS Missouri to the USS Missouri Memorial Association of Honolulu, Hawaii. We hold that because the remedy sought by plaintiff will not redress the injury it alleges, plaintiff lacks standing. We therefore affirm the district court's order granting defendant's motion to dismiss.

Standing is a question of law which we review de novo. *See McBride v. PLM Int'l, Inc.*, 179 F.3d 737, 748 (9th Cir. 1999). In order for a federal court to have jurisdiction to adjudicate a plaintiff's claim, the plaintiff must have standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992). Standing requires three elements: injury, causation, and redressability. Thus to have standing, the plaintiff must allege a personal injury that is fairly traceable to the defendant's allegedly unlawful conduct and that is likely to be redressed by the requested relief. *See id.* at 560-61. A plaintiff has the burden of establishing each of the three requirements for standing. *See id.* at 561; *Northwest Envt'l Defense Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1528 (9th Cir. 1997).

---

2. The Honorable Adrian G. Duplantier, Senior United States District Judge for the Eastern District of Louisiana, sitting by designation.

Appendix A

Missouri on the Mainland ("MOM") is a State of Washington non-profit corporation dedicated to creating a permanent home for the USS Missouri on the west coast of the continental United States. The Missouri is the battleship on which the Japanese surrendered on September 2, 1945, bringing an end to World War II. Except for two periods of recall service, the Missouri was moored for about forty years in the Naval Inactive Ship Maintenance Facility in Bremerton, Washington. In 1995, the Navy decommissioned the vessel, striking it from the Naval Vessel Register and rendering it eligible for donation under § 7306. The Navy received five applications for the Missouri, including one from a public corporation created by Kitsap County, Washington, for the purpose of acquiring the vessel and keeping it in Bremerton. On August 21, 1996, the Secretary approved the application of the USS Missouri Memorial Association of Honolulu, Hawaii. On May 4, 1998 the Navy transferred title. The ship was towed to Pearl Harbor and placed near the USS Arizona memorial to create "bookends" representing the United States' participation in World War II. The vessel has since been converted into a memorial and museum.

The principal injuries that MOM alleges revolve around the frustration of its interest in having the Missouri moored on the west coast of the United States.[3] The principal relief which MOM seeks is a declaration that § 7306 is

3. MOM also alleges a "procedural injury" arising from the donation process. We agree with the district court that since MOM did not submit a donation application and has not alleged that it was prevented from doing so, MOM had no personal stake in the process and so suffered no cognizable procedural injury.

unconstitutional.[4] Even if the district court were to rule that the statute is unconstitutional and that the donation was void, the Navy would be under no obligation to return the Missouri to the west coast. The Navy, in its discretion, could decide to keep the Missouri in Hawaii, where it is currently moored. The Supreme Court has held that in order to satisfy the redressability requirement, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561. Because it is far from likely that a ruling that § 7306 is unconstitutional would result in the return of the Missouri to the mainland, we conclude that MOM's injury is not redressable and that MOM lacks standing. The order of the district court is

AFFIRMED

---

4. MOM also seeks a declaration that it was illegal for the Secretary to donate the Missouri under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §§ 471-544 (1994) and under 41 C.F.R. § 101-44.108-9(b)(2)(iii) (1999). While the regulation does prohibit the donation of vessels such as the Missouri, *see also* 40 U.S.C. § 472(d)(2), the statute and this implementing regulation govern the disposition of property by the General Services Administration, not the Navy.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA GRANTING DEFENDANTS' MOTION TO DISMISS FILED NOVEMBER 4, 1998

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Case No. C98-5268FDB

MISSOURI ON THE MAINLAND, INC.,
a Washington nonprofit corporation,
Plaintiff,

v.

JOHN DALTON, Secretary of the Navy; INSPECTOR GENERAL OF THE NAVY, Washington, D.C.; CHIEF ADMINISTRATOR, General Services Administration, Washington, D.C.; COMPTROLLER GENERAL, General Accounting Office,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter is before the Court on Defendants' Motion to Dismiss or, alternatively, for summary judgment. The subject of this lawsuit is the donation of the historic battleship USS MISSOURI from the Navy to the MISSOURI Memorial Association of Honolulu, Hawaii (MMA). The MMA, one of five applicants for the donation, survived a review process

that included financial, technical, historic significance, and public affairs benefit assessments more fully described in the Defendants' Memorandum pp. 1-6. The review process appears to have been extensive and detailed and to have included an Environmental Assessment, compliance with the National Historic Preservation Act (NHPA) and the Toxic Substances Control Act; the donation decision has been scrutinized twice by the GAO (the USS MISSOURI Allied Forces Memorial of San Francisco, California (an applicant) filed a protest, and Rep. Norm Dicks requested an examination), which upheld the Navy's decision both times; the decision survived review two times in the U. S. Senate.

Plaintiff MISSOURI on The Mainland, Inc. (MOM) was not an applicant, although another Washington group, Kitsap County Historic Battleship Missouri Public Corporation, Bremerton, Washington (The Bremerton Applicant, also referred to as the Save the Missouri Committee) did apply. Nevertheless, MOM did participate in the process, presenting comments at the public forum, and was treated as an interested party in the NHPA review.

The Secretary of the Navy's decision to donate the ex-MISSOURI[1] to MMA was made on August 21, 1996, title was transferred from the Navy to MMA on May 4, 1998, the ex-MISSOURI left Bremerton and began its voyage to Pearl Harbor under tow on May 23, 1998, arriving in Pearl Harbor on June 22, 1998.

---

1. Once a ship is struck from the Naval Vessel Register, the ship is no longer referred to as "USS"; it is then designated "ex-."

Appendix B

Defendants seek dismissal of this lawsuit on the grounds that Plaintiff lacks standing. Standing is a necessary element of the "case or controversy" requirement for federal court jurisdiction and requires a showing, at minimum, that the party invoking the Court's jurisdiction show that 1) he has personally suffered an "injury in fact" that is concrete and particularized; 2) the injury is fairly traceable to the challenged action; and 3) it is likely that the injury will be redressed by a favorable decision. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982).

Plaintiff declares its purpose is "to Perpetuate the historical event of the 50th anniversary of the ending of World War II on September 2, 1995, and to keep the USS MISSOURI ON THE MAINLAND, USA." Further, the Complaint alleges that if the ex-MISSOURI is not moored in "an area, and particularly in Bremerton, where the greatest number of citizens of the United States can have realistic and ease of access to this historic landmark, the members of Plaintiff will be irreparably harmed by the deprivation of their corporate purpose."

On the issue of standing, as to the first element, Plaintiff alleges a special interest in the aesthetic, recreational, and historical benefit arising from the continued existence of the ex-MISSOURI in Washington. While harm to aesthetic and environmental well-being has been recognized as a cognizable injury, *Fund for Animals, Inc. v. Lujan*, 962 F2d 1391, 1396 (9th Cir. 1992), for an organization to be able to bring an action for such harm, it must have individual members who have suffered that injury. *Id.* at 1396-97.

MOM does not allege that any individual member has suffered such harm; rather it alleges that the concept of associational standing does not apply because it has alleged injury to itself as a nonprofit corporation. The injury alleged is to MOM's corporate purpose stemming from the removal of the ex-MISSOURI from the mainland United States. Defendants argue that under this theory one could obtain jurisdiction by forming an organization to challenge a particular action. *See Fair Housing Council v. Mail Line Times and Acme Newspapers, Inc.*, 1997 U.S. Dist. LEXIS 596 (E.D. Pa., Jan. 27, 1997) (Plaintiff's argument that the diversion of resources from its various programs to the pursuit of its lawsuit constituted injury in fact was a circular position that would effectively abolish the requirement for standing.) Defendants conclude that MOM's alleged injury does not constitute injury in fact for standing purposes, *see Sierra Club v. Morton*, 405 U.S. 727, 735 (1972) (the Sierra Club, whose principal corporate purpose includes conserving the national resources of the Sierra Nevada Mountains, lacked standing to challenge development within the Sequoia National Forest), and this Court agrees.

Plaintiff also alleged a procedural injury arising from the donation process. The Court agrees with Defendants, that since Plaintiff did not submit a donation application, and has not demonstrated that the donation process prevented it from doing so, Plaintiff has no personal stake in the process and cannot demonstrate injury. Plaintiff also alleges an economic injury, but has not demonstrated how it suffered such injury.

Appendix B

Plaintiff also asserts third-party standing on behalf of the Bremerton Applicant. With third-party standing, a federal court may allow a litigant who has himself suffered an injury traceable to the defendant's actions to also raise the rights of a third party with whom he bears a close relationship if there is a legitimate hindrance to the third party's ability to protect his own interests. *Powers v. Ohio*, 499 U.S. 400, 410-11 (1991). As discussed above, however, Plaintiff has not demonstrated any injury of its own. Plaintiff was not an applicant and is not a successor in interest to the Bremerton Applicant, which is now dissolved.

In any event, Plaintiff has not demonstrated that its alleged injuries are addressable by a favorable decision by this Court. Plaintiff has not demonstrated economic harm, and even if this Court overturned the donation or declared the donation statute unconstitutional, the Court agrees with Defendants that there is no resulting requirement that the ex-MISSOURI be returned to Bremerton; rather the ship would return to Navy ownership, and the Navy would, in its discretion, determine its disposition. A case with analogous facts involved a challenge to the Secretary of Interior's decision to set aside a tract of land for competitive coal leasing in exchange for a conservation easement on another parcel of land. *See Ash Creek Mining Co. v. Lujan*, 969 F.2d 868, 876 (10th Cir. 1992). The plaintiff asked the Court to void the exchange. The Court held that the Plaintiff lacked standing because its alleged injury could not be redressed by an order voiding the exchange; even if the exchange were voided, the Secretary would still have the discretion to offer the land in question for competitive coal leasing, and even if Plaintiff bid on the land, there was no assurance that

Plaintiff would be the successful bidder. *Id.* at 872, 874. Here, as in *Ash Creek*, Plaintiff MOM's alleged injuries cannot be redressed by a favorable decision from this Court.

Now, therefore, Plaintiff's cause of action must be dismissed for lack of standing.

ACCORDINGLY,

IT IS HEREBY ORDERED:

Defendant's Motion for Dismissal is GRANTED, and this cause of action is dismissed for lack of standing.

DATED this 4 day of November, 1998.

s/ Franklin D. Burgess
FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE